



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - :

BORIS YUSUPOV, :

Defendant. :

----- x

ORDER

S4 11 Cr. 614 (VM)

WHEREAS, with defendant BORIS YUSUPOV's consent, his guilty plea allocation was taken before United States Magistrate Judge Michael H. Dolinger on March 21, 2013;

WHEREAS a transcript of the allocation was made and thereafter was transmitted to the District Court; and

WHEREAS, upon review of that transcript, this Court has determined that the defendant entered the guilty plea knowingly and voluntarily, and that there was a factual basis for the guilty plea;

IT IS HEREBY ORDERED that the defendant's guilty plea is accepted.

Dated: New York, New York
April 22, 2013

A handwritten signature in black ink, appearing to read "Victor Marrero", written over a horizontal line.

HON. VICTOR MARRERO
United States District Judge
Southern District of New York

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

11 CR 614 (VM)

5 BORIS YUSUPOV,

6 Defendant.

7 -----x

8 New York, N.Y.
9 March 21, 2013
11:28 a.m.

10 Before:

11 HON. MICHAEL H. DOLINGER,

12 Magistrate Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 JONATHAN COHEN

Assistant United States Attorney

18 LOUIS R. AIDALA

19 Attorney for Defendant

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1 (In open court)

2 THE DEPUTY CLERK: United States v. Boris Yusupov.
3 Counsel, state your name for the record.

4 MR. COHEN: Jon Cohen on behalf of the government.
5 Good afternoon, your Honor.

6 MR. AIDALA: No, it's good morning, your Honor.

7 MR. COHEN: Still morning.

8 MR. AIDALA: Louis R. Aidala, A-I-D-A-L-A, for
9 Mr. Yusupov, who's alongside of me.

10 THE COURT: Let me just clarify one thing.

11 The plea agreement refers to the charge as being
12 aiding and abetting; is that, in fact, the case? Because the
13 text of the information doesn't seem to say that, although it
14 does cite Section 2.

15 MR. COHEN: Yeah, it cites Section 2. It's an aiding
16 and abetting theory, your Honor.

17 THE COURT: Okay. Am I also correct that, if
18 convicted on the charge, the defendant would face up to six
19 months in prison, up to one year of supervised release, a fine
20 of \$3,000, and a \$10 special assessment?

21 MR. COHEN: That's correct, your Honor.

22 THE COURT: Okay. Mr. Yusupov, the fourth superseding
23 information in this case charges you with a violation of the
24 U.S. immigration laws. Ordinarily, when a defendant enters a
25 plea to a charge such as this, he will do so before a United

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1 States District Judge, who will also conduct the required
2 question-and-answer session that accompanies the plea.
3 However, with the consent of the defendant, United States
4 Magistrate Judges, of whom I'm one, also have the authority to
5 take a plea in a case such as this.

6 If you would consent to enter your plea before a
7 magistrate judge, you'd receive all the same protections as you
8 would have before a district judge. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Is it your wish at this time to enter a
11 plea before a magistrate judge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is this your signature on the consent
14 form?

15 THE DEFENDANT: That's affirmative.

16 THE COURT: Now, before I take your plea, I have to
17 ask you some questions and, therefore, I need to put you under
18 oath.

19 (Defendant sworn)

20 THE COURT: Would you please state your full name.

21 THE DEFENDANT: My name is Boris, last name is
22 Yusupov.

23 THE COURT: What is your age?

24 THE DEFENDANT: 37 years at the time.

25 THE COURT: What is the extent of your formal

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1 education?

2 THE DEFENDANT: Master degree in the Soviet, bachelor
3 equivalent to here.

4 THE COURT: Are you now or have you recently been
5 under the care of a doctor or psychiatrist for any reason?

6 THE DEFENDANT: No.

7 THE COURT: Are you currently under any medication?

8 THE DEFENDANT: No.

9 THE COURT: Are you at this time under the influence
10 of any mind-altering drugs or alcoholic drinks?

11 THE DEFENDANT: Negative.

12 THE COURT: Have you been able to understand pretty
13 much everything that's been said to you so far today?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you received a copy of the fourth
16 superseding information?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you read it or do you want me to read
19 it to you?

20 THE DEFENDANT: I have been.

21 THE COURT: Do you understand what it says you did?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you had an opportunity to discuss
24 this charge and how you wish to plead today with your attorney?

25 THE DEFENDANT: Yes, I did, sir.

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1 THE COURT: Are you satisfied with your attorney?

2 THE DEFENDANT: Yes.

3 THE COURT: Are you ready at this time to enter a plea
4 to the charge?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Bearing in mind that the information
7 charges you in substance with aiding and abetting a practice of
8 hiring undocumented aliens for employment purposes, how do you
9 plead to this charge, guilty or not guilty?

10 THE DEFENDANT: Guilty, your Honor.

11 THE COURT: Because you're proposing to enter a guilty
12 plea, I have to ask you some additional questions. My purpose
13 in doing so is to ensure that you understand the consequences
14 of pleading guilty, and also to be certain that your plea is,
15 in fact, voluntary.

16 First of all, I want you to understand that, if
17 convicted on this charge, you could face a potential maximum
18 penalty that would involve a prison term of as long as six
19 months, a term of supervised release of as long as one year, a
20 fine of up to \$3,000 for each alien hired, and a mandatory
21 special assessment of \$10.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you also understand that if as part of
25 your sentence you were placed on supervised release and you

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1 violate any of the conditions of that release, your supervised
2 release term could be revoked, and you could face an additional
3 term of imprisonment?

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you a United States citizen?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that you have a right to
9 plead not guilty to this charge and a right to a trial?

10 THE DEFENDANT: I understand, sir.

11 THE COURT: Do you understand that if you decided to
12 plead not guilty and went to trial, the burden would be on the
13 government to prove your guilt beyond a reasonable doubt?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that at such a trial,
16 you would be presumed innocent unless and until the government
17 proved your guilt beyond a reasonable doubt?

18 THE DEFENDANT: I understand, sir.

19 THE COURT: You understand that at such a trial, you
20 would be entitled to be represented by a lawyer at all stages,
21 and if you could not afford to hire one, the services of an
22 attorney would be provided without charge?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that at such a trial,
25 you would be entitled, through your lawyer, to cross-examine

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1 any witnesses called by the government to testify against you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand also that at such a
4 trial, you would be entitled to call witnesses to testify on
5 your behalf?

6 THE DEFENDANT: Yes, I'm aware of that.

7 THE COURT: Do you understand also that at such a
8 trial, you would be entitled to use the authority of the Court
9 through the issuance of subpoenas to compel witnesses to come
10 to court to testify for you?

11 THE DEFENDANT: Yes, I understand that.

12 THE COURT: Do you understand also that at such a
13 trial, you would be entitled, if you wished, to testify on your
14 own behalf?

15 THE DEFENDANT: I know that, sir.

16 THE COURT: Do you understand also that at such a
17 trial, you would not be required to incriminate yourself, that
18 is, you would not be required to testify against yourself?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that by pleading guilty,
21 you're giving up all of these protections, including a trial,
22 and the only remaining step will be the imposition of sentence?

23 THE DEFENDANT: I understand it, sir.

24 THE COURT: Do you understand the nature of the charge
25 to which you're pleading guilty?

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1 THE DEFENDANT: Yes.

2 THE COURT: You understand the range of penalties to
3 which you are at least potentially subjecting yourself by
4 pleading guilty?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: You understand also that if any of the
7 answers you give to me today prove to have been untruthful, you
8 could face a separate prosecution for perjury?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you still wish to plead guilty?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Have any threats been made to influence
13 how you plead today?

14 THE DEFENDANT: No.

15 THE COURT: I have received a copy of a letter dated
16 March 1, 2013 which was sent from United States --

17 MR. AIDALA: Judge, can I ask --

18 (Pause)

19 MR. AIDALA: Judge, I'll tell you what. When the
20 prosecutor brought in the plea agreements, apparently there was
21 one dated February 27th. And I guess when he redid it, and I
22 know he sent to me one dated March 1st, but this morning we
23 have February 27th, but the one you have, which is the
24 original, I guess, is March 1st. I think they both contain the
25 exact same language, but so that there's no confusion, I don't

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1 know whether that was the only March 1st one.

2 THE COURT: Is there a signed plea agreement?

3 MR. COHEN: There's a signed plea agreement. I
4 believe what happened, your Honor, on one of them it has March
5 1st as the date, because of an update on the software that has
6 automatic updating.

7 THE COURT: Which is the one that was signed?

8 MR. COHEN: All three have been signed by all parties.
9 Your Honor can proceed on that copy or on these copies.

10 MR. AIDALA: The copy I have is the February 27th
11 copy.

12 THE COURT: Is the signed March 1 plea agreement the
13 same as the March 1 plea agreement that has been handed up to
14 me?

15 MR. COHEN: Yes, your Honor.

16 If your Honor would like to give the defendant a
17 moment to look at that precise agreement.

18 THE COURT: Certainly.

19 MR. AIDALA: The question is is the one February 27th
20 that the prosecutor has and I have the same as the March 1st
21 one that you have.

22 THE COURT: Mine is unsigned, by the way.

23 MR. COHEN: Oh, so perhaps this was the one that -- I
24 see.

25 MR. AIDALA: That's the one that was emailed

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1 apparently by the prosecutor.

2 MR. COHEN: So, Judge, you do have a signed one up
3 there. This is a different copy.

4 THE COURT: There is one I have, which is signed and
5 it's dated February 27.

6 MR. AIDALA: That's the one that's been executed,
7 Judge.

8 MR. COHEN: That's the one that's been executed, your
9 Honor.

10 THE COURT: Okay. Let me ask, while we're discussing
11 this, do the guidelines apply in this case?

12 MR. COHEN: It does not, your Honor, because this is a
13 Class B misdemeanor.

14 THE COURT: Okay.

15 As I was, I think, saying before, Mr. Yusupov, I have
16 received what appears to be a plea agreement in the form of a
17 letter dated February 27, 2013. Apart from what is contained
18 in this letter, have any promises been made to you as to the
19 sentence that you will receive in this case?

20 THE DEFENDANT: Say it again please.

21 THE COURT: Putting aside what's in this February 27
22 letter, which is apparently a plea agreement, have you been
23 promised a particular sentence in this case?

24 THE DEFENDANT: No.

25 THE COURT: You understand that the decision as to the

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1 appropriate sentence will be entirely up to the trial judge,
2 Judge Marrero?

3 THE DEFENDANT: Yes, sir, I know that.

4 THE COURT: You understand also that even if you're
5 shocked and disappointed at the sentence that you receive from
6 Judge Marrero, you will still be bound by your guilty plea?

7 THE DEFENDANT: Yes.

8 THE COURT: Did you sign this plea agreement?

9 THE DEFENDANT: Yes.

10 THE COURT: Before you signed it, did you discuss it
11 with your attorney?

12 THE DEFENDANT: Yes, I did.

13 THE COURT: Did he explain to you all of its terms and
14 conditions?

15 THE DEFENDANT: He did.

16 THE COURT: Now, I note that as part of the plea
17 agreement, there is a provision that you will be giving up your
18 right to appeal from your conviction and sentence, provided the
19 sentence is not longer than the statutory maximum of six
20 months. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you also understand that as part of
23 this plea agreement, even if it turns out that the government
24 has improperly withheld from your attorney information that
25 would have been helpful to him in defending you at trial,

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1 you're giving up your right to complain about that form of
2 government misconduct?

3 Do you understand that?

4 THE DEFENDANT: Yes, I understand, sir.

5 THE COURT: Is your plea voluntary and made of your
6 own free will?

7 THE DEFENDANT: Yes.

8 THE COURT: Did you, in fact, commit the crime that is
9 charged in the information?

10 THE DEFENDANT: Say it again please.

11 THE COURT: Did you commit the crime that is charged
12 in the information?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, before I ask Mr. Yusupov to specify
15 his conduct, I will ask the government briefly to summarize the
16 elements that it would have to establish at trial to sustain
17 this charge.

18 MR. COHEN: Of course, your Honor.

19 To sustain a charge of aiding and abetting violations
20 of Title 8, Section 1324a(a) and 1324a(f), the government would
21 have to prove that the defendant aided and abetted an
22 individual who was engaged in a pattern of hiring illegal
23 aliens, a pattern and practice of hiring illegal aliens; and
24 that the defendant knew that they were illegal aliens; and that
25 that individual did.

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1 MR. AIDALA: Judge, if I may add something.

2 I notice there's a waiver of venue. Now, that's been
3 done on the basis of the representation by the government that
4 with respect to the original indictment, if he would go to
5 trial, that they would have no problem in establishing venue
6 within the confines of the Southern District of New York. And
7 based on that representation, we waive any venue with respect
8 to the information.

9 MR. COHEN: That's absolutely correct, your Honor.

10 THE COURT: Okay.

11 MR. AIDALA: The other representation was made is that
12 to the best of the knowledge of the prosecution, there's no
13 pending investigation or any pending indictment as to
14 Mr. Yusupov. Of course, if the State of Kansas intends to
15 indict him for purloining Dorothy's ruby red slippers, that is
16 not binding on the Southern District of New York.

17 THE COURT: Okay.

18 MR. COHEN: Judge, may I -- Mr. Aidala has asked me to
19 make that representation. I do want to make clear that this
20 plea agreement does not bind other districts at all. The
21 representation I'm willing to make is that I don't know of any
22 other investigations into Mr. Yusupov.

23 THE COURT: And I take it that's a sufficient
24 representation for the defendant to be entering his plea now;
25 is that correct, Mr. Aidala?

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1 MR. AIDALA: Yes.

2 THE COURT: Okay. Now, Mr. Yusupov, can you tell us
3 in your own words what it is that you did that forms the basis
4 for the charge to which you're now pleading guilty.

5 THE DEFENDANT: In the year of 2010 and '11, I helped
6 to transport unauthorized aliens who were hired by another
7 person, and to work at the clubs. And I knew that they were
8 unauthorized to do so.

9 THE COURT: You knew that at the time?

10 THE DEFENDANT: Say it again?

11 THE COURT: You knew that at the time that they were
12 unauthorized --

13 THE DEFENDANT: Yes.

14 THE COURT: -- aliens?

15 And when you say you helped to transport them, that
16 was to transport them to the location where they were to be
17 employed; is that correct?

18 THE DEFENDANT: Yes.

19 THE COURT: Are there any other questions that I
20 should ask the defendant at this time?

21 MR. COHEN: No, your Honor.

22 THE COURT: Do either of you know of any reason why
23 the plea should not be accepted?

24 MR. AIDALA: No, your Honor.

25 MR. COHEN: No, your Honor.

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1 THE COURT: I'm satisfied that Mr. Yusupov understands
2 the nature of the charge to which he's pleading guilty, and
3 that he understands the consequences of his guilty plea. I'm
4 also satisfied that his plea is voluntary, and that there is a
5 factual basis for it. I'm therefore recommending that Judge
6 Marrero accept the proffered plea.

7 I assume the government will order the transcript of
8 today's proceeding and submit it together with any other
9 paperwork to Judge Marrero so that he may act on this
10 recommendation.

11 MR. COHEN: Yes. The government has already ordered a
12 transcript with the court reporter. Thank you.

13 THE COURT: Very well.

14 Anything else on this matter?

15 MR. COHEN: Not from the government, your Honor.

16 MR. AIDALA: No, your Honor.

17 THE COURT: Thank you.

18 MR. COHEN: Judge, actually, one more thing.

19 How would you like us to proceed with regard to the
20 sentencing date before Judge Marrero, that I should just call
21 chambers and pick one or would you prefer to set a control
22 date?

23 THE COURT: No, you should contact Judge Marrero's
24 chambers. And I have no doubt that they will give you an
25 appropriate date.

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1 MR. COHEN: Okay. Thank you, your Honor.

2 THE COURT: Thank you.

3 MR. AIDALA: Judge, I don't know if you mark it that
4 I'll be present when he's interviewed by probation.

5 THE COURT: Okay. Fine.

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U.S. Department of Justice

*United States Attorney
Southern District of New York*

The Silvio J. Mollo Building

*One Saint Andrew's Plaza
New York, New York 10007*

April 22, 2013

BY HAND AND BY ELECTRONIC MAIL

The Honorable Victor Marrero
United States District Judge
United States District Court for the
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Chambers 1040
New York, New York 10007

Re: United States v. Boris Yusupov,
S4 11 Cr. 614 (VM)

Dear Judge Marrero:

Defendant Boris Yusupov entered a guilty plea on March 21, 2013 before United States Magistrate Judge Michael H. Dolinger. The Government respectfully requests that the Court accept Yusupov's guilty plea. Enclosed please find a transcript of the proceedings and a proposed Order accepting the plea. Sentencing is currently scheduled for July 19, 2013, at 2:00 p.m.

Respectfully submitted,

PREET BHARARA
United States Attorney
Southern District of New York

By: /s/
Jonathan Cohen/Michael Ferrara
Assistant U.S. Attorneys
212-637-2408/-2526

Enclosures

Cc: Louis Aidala, Esq.